SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 67

LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, PETITIONER

vs.

UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In Supreme Court of the District of Columbia as a District Court of the United States

At law. No. 76361.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & Chemical Corporation

vs.

ROY O. WEST, SECRETARY OF THE INTERIOR

Petition for review and mandamus

Filed Feb. 18, 1929

The petition of the United States on the relation of Chestatee Pyrites & Chemical Corporation respectfully represents:

I. The relator, Chestatee Pyrites and Chemical Corporation, is a corporation duly and legally organized and existing under the laws of the State of Georgia, a citizen of the State of Georgia, residing in the county of Fulton, in said State, and this petition is brought to review the final decision of the Secretary of the Interior upon a question of law which has heretofore arisen in the adjustment, liquidation, and payment of claims under the acts hereinafter named against Roy O. West, citizen of the State of Illinois, officially residing in the District of Columbia.

II. That the said Roy O. West, respondent, is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the war minerals claims and especially section 5 of the act of March 2, 1919, and the amendments thereto, including the amendment entitled "A bill to amend section 5 of the act approved March 2, 1919, known as the war minerals act," approved February 13th, 1929, and such respondent is sued in his official capacity as Secretary of the Interior as aforesaid.

III. The said respondent as Secretary of the Interior and his predecessors in office under said section 5 of said act as amended was and is:

"Authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce * * * pyrites * * * in compliance with the request or demand of the Department of the Interior * * * to supply the urgent needs of the nation in the prosecution of the war * * *."

IV. The Chestatee Pyrites & Chemical Corporation, between the [illegible] day of April, 1917, and the 11th day of November, 1918, in preparing to produce and in producing pyrites in compliance with the

request of the Department of the Interior to supply the urgent need of the Nation in the prosecution of the war, made expenditures and incurred obligations in good faith upon property containing pyrites in sufficient quantities to be of commercial importance.

V. As authorized by said act of March 2, 1919, section 5, the Chestatee Pyrites & Chemical Corporation did, on the 5th day of March, 1919, file its claim with the Secretary of the Interior seeking and praying that an award be made to it under said act of its net losses for the expenditures made and obligations incurred by complainant in good faith upon property which contained pyrites as described in said section 5 of said act.

VI. In the said petition or claim of the Chestatee Pyrites & Chemical Corporation filed as aforesaid on the 5th day of March, 1919, the relator, as part of said expenditures made and obligations incurred, claimed interest paid by it and due to be paid by it thereafter on borrowed money necessary to be borrowed for the purpose of complying with the request and demand of the Secretary of the Interior. Thereafter, on October 18, 1919, Honorable Franklin K. Lane, then Secretary of the Interior, made an award which was considered by relator wholly inadequate.

VII. Thereafter, by act approved November 23, 1921 (chapter 137, 42 Stat. 322), it was provided:

"That all claimants * * * shall be reimbursed such net losses as they may have incurred, and are in justice and equity entitled to from the appropriation in said act;"

And the Secretary of the Interior was authorized:

4 "If in claims passed upon under said act [of March 2nd, 1919] awards have been denied or made on rulings contrary to the provisions of the amendment [the amendment of November 23, 1921] or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

And the then Secretary of the Interior, Honorable Albert B. Fall, did review the claim of the Chestatee Pyrites & Chemical Corporation, relator herein, and did require a complete study of the facts of said relator's claim and, among other things, required an investigation thereof by the chief accountant in the War Minerals Relief Division of the Department of the Interior.

VIII. Said chief accountant by report filed September 21, 1922, among other things found and reported in substance that in compliance with the demands and request of the Government and in a legitimate effort to produce and in producing pyrites, relator had been compelled to borrow and expend large sums of money and had agreed to pay interest thereon; that prior to November 11, 1918, relator had actually paid interest in a large amount, and there had accrued on said loans further interest that was then unpaid. Other amounts have since accrued and are yet accruing.

IX. Prior to making said loans referred to in the report of said accountant the said Secretary of the Interior Franklin K. Lane had specifically, through his agents, urged and requested the Chestatee

Pyrites & Chemical Corporation, relator herein, to borrow the sums of money it was compelled to borrow aforesaid for the purpose of extending its production of pyrites, which money was so borrowed and used.

X. The Department of the Interior found, under undisputed evidence, that Chestatee Pyrites & Chemical Corporation, by reason of producing and preparing to produce pyrites, in compliance with the request and demand of the Department of the Interior, to supply the urgent needs of the Nation in the prosecution of the war, in good faith expended money and incurred obligations in response to such request and demand, and that such expenditures so made and obligations thus incurred by the Chestatee Pyrites & Chemical Corporation were made in good faith upon property which contained pyrites in sufficient quantities to be of commercial importance; and there is no dispute between the Department of the Interior and said Chestatee Pyrites & Chemical Corporation that said corporation is entitled to receive an allowance and award for its net losses suffered as a consequence of its compliance with said request and demand.

XI. Thereafter relator's claim was brought before the honorable Albert B. Fall, then Secretary of the Interior, who made an additional award to relator, said award being based upon the said report of said chief accountant and the finding of John Briar, assistant war minerals relief commissioner of the Department of the Interior. In said assistant relief commissioner's report on the claim of relator it was found that the Secretary of the Interior in office at the time relator was requested and required to produce pyrites, and to make said loans therefor, realized that relator's mine presented opportunity for the biggest production of pyrites in the entire country and "that the said Secretary used every means in his power to persuade claimant to develop it."

XII. Upon the coming in of said report of said Briar the honorable Albert B. Fall, then the Secretary of the Interior, reviewed the same, making allowance to relator by way of a further award but specifically and definitely denying to relator any award for its net losses incurred by reason of payment of interest on borrowed money or obligations incurred to pay further interest, the said Secretary's conclusion being in substance that if the Congress contemplated the payment of interest, such award would not preclude remedial action by the Congress.

XIII. Subsequent Secretaries of the Interior, including the respondent herein, declined and refused to make award in allowance for such expenditures or obligations incurred, admitting that interest had been paid on borrowed money and that obligations had been incurred to pay further interest but holding that such payments did not constitute allowable net losses.

XIV. Thereafter the Congress of the United States by the act hereinbefore described, approved February 13th, 1929, gave jurisdiction to this court to review the final decision of the

Secretary of the Interior upon any question of law which had arisen or which might thereafter arise in the adjustment, liquidation, and payment of claims under said section 5 of the act approved March 2nd, 1919, and amendments thereto. On the claim of this relator there has been a final decision of the Secretary of the Interior upon a question of law, to wit: It is not disputed as a matter of fact that relator suffered net losses by reason of payments of interest on money borrowed and by reason of obligations to pay such interest but it was held by the Secretary of the Interior that notwithstanding relator had suffered such net losses, the amount of which is easily ascertainable that such net losses were not such as were required to be paid by the said act of March 2nd, 1919, as amended.

XV. Since the passage of the act approved February 13th, 1922, respondent while not denying that relator has suffered such net losses declines himself to make an award thereunder, and this petition is brought to review the final decision of the Secretary of the Interior upon the question of law aforesaid and for the writ of mandamus.

XVI. That the Secretaries of the Interior and the respondent erred in law in not finding that moneys paid and obligations incurred for the use of money borrowed as aforesaid resulting in net loss were proper matters to be allowed in making an award under said act of March 2nd, 1919, as amended.

XVII. Wherefore petitioner, on behalf of the relator aforesaid, prays:

1. That this court review the final decision of the Secretary of the Interior and his predecessors in office upon the question of law involved and direct said Secretary, respondent herein, to make an award of such amount as the facts show is due for interest paid on borrowed money and for obligations to pay interest thereon.

2. That a writ of mandamus be issued directing the respondent, Roy O. West, Secretary of the Interior, to take jurisdiction of the claim of relator for expenditures made and obligations for interest incurred as hereinbefore set forth and to allow such sum as may have been paid or contracted to be paid therefor, and to adjust and pay relator's net losses, consisting of interest paid on borrowed money and obligations incurred to pay interest thereon.

3. That such other order or orders be entered as the court may deem necessary under the law.

4. That a rule may issue requiring respondent, Roy O. West, as Secretary of the Interior, to show cause, if any he can, why this court should not review said final decision and why a writ of mandamus should not issue as herein prayed.

CHESTATEE PYRITES CHEMICAL CORPORATION,
By GEO. L. PRATT,
Vice President and Treasurer.

[*Duly sworn to by George L. Pratt; jurat omitted in printing.*]

In Supreme Court of the District of Columbia as a District Court of the United States

[Title omitted.]

Motion for substitution.

Filed Mar. 15, 1929

In the above-styled cause relator respectfully shows to the court that the respondent, the Honorable Roy O. West, has ceased to hold the office of Secretary of the Interior and that that office is now held by the Honorable Ray Lyman Wilbur; that there is a substantial need for continuing and maintaining the above-styled cause and for obtaining an adjudication of the questions therein involved.

Wherefore within six (6) months after the termination of the office in the office of Secretary of the Interior of the Honorable Roy O. West relator moves that this cause be permitted to continue and be maintained against his successor in office, the Honorable Ray Lyman Wilbur.

EDGAR WATKINS,
Attorney for Relator.

Receipts of copy acknowledged this Mch. 11, 1929.

O. H. GRAVES,
Atty. for Deft.

In Supreme Court of District of Columbia

Order substituting party respondent.

Notice of the foregoing motion having been given, and the Honorable Ray Lyman Wilbur, Secretary of the Interior, consisting thereto, it is ordered that Ray Lyman Wilbur, as Secretary of the Interior, be, and he is hereby, substituted for the respondent Roy O. West, and this cause be permitted to be continued and maintained against Ray Lyman Wilbur as successor in office of respondent Roy O. West.

WENDELL P. STAFFORD, *Judge.*

In Supreme Court of the District of Columbia

[Title omitted.]

Response to the rule to show cause.

Filed Mar. 15, 1929

Comes now Ray Lyman Wilbur, Secretary of the Interior, and responding to the rule to show cause herein, suggests to the court that the petition for review presents only the following question, namely: Whether or not one who was engaged in producing or

preparing to produce any of the minerals named in said act and sustained a net loss on account of, or including, interest paid on borrowed money, or indebtedness applied as capital to compliance with its provisions is entitled to have such interest loss reimbursed?

This question was decided by the Secretary of the Interior in the negative in connection with petitioner's claim for losses sustained under section 5 of the war minerals relief act of March 2, 1919 (40 Stat. 1272), as amended, and as shown by copies of the various decisions of the Secretary of the Interior and recommendations of the war minerals relief commissioners marked, respectively, "Exhibits A, B, C, D, and E," attached hereto and made a part hereof.

Under the act of February 25, 1939 (Public, No. 728, 76th Congress), this court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, as respondent makes no objection to, but on the other hand invites, review of such questions. The petition for review presents the sole question for which petitioner prays a review herein, and it is assumed that the court will confine its review to the single question raised.

RAY LYMAN WILBUR,
Secretary of the Interior,
By E. C. FINNEY,
Solicitor, Interior Department.
O. H. GRAVES,
Assistant to the Solicitor.

Ex. A to response to rule

(Copy)

Department of the Interior, War Minerals Relief Commission,
Washington

Commissioners: John F. Shafer th, Martin D. Foster, Philip N. Moore

JUNE 5, 1919.

The honorable the SECRETARY OF THE INTERIOR.

DEAR MR. SECRETARY: In the matter of claim No. 1, Chestnut Pyrites and Chemical Corporation and N. P. Pratt and George [illegible] Pratt, referred by you to this commission for investigation, [illegible] commission has recommended an award of $138,578.46 as the entire sum for which the United States Government bears any moral or statutory obligation.

Very truly yours,

(Signed) JOHN F. SHAFER TH.
M. D. FOSTER.
PHILIP N. MOORE.
Commissioners, War Minerals Relief Commission.

11 *Ex. B to response to rule*

(Copy)

DEPARTMENT OF THE INTERIOR,
Washington, Aug. 8, 1919.

Claim No. 1. In re Chestatee Pyrites & Chemical Corporation, N. P. Pratt, and George L. Pratt

The above is a claim under the war minerals relief act (section 5, act of March 2, 1919, 40 Stat. 1274). The law authorizes compensation for losses incurred in the production of pyrites during the war due to stimulation by the Government.

Here there was such stimulation commencing June 18, 1917. I have reviewed the record and brief filed, and an award of $219,607.90 is made. This is based upon the report of the War Minerals Relief Commission, but with 56.6 as the percentage of stimulation and a partial allowance of the financing item.

Nothing has been allowed for the railroad, since it appears that the rails were bought prior to the stimulation and the correspondence indicates the claimants' purpose to build prior to the Government's request. No allowance has been made for the salaries.

(Signed) FRANKLIN K. LANE,
Secretary.

Ex. C to response to rule

(Copy)

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, October 15, 1919.

Claim No. 1. In re Chestatee Pyrites and Chemical Corporation, N. P. Pratt, and George L. Pratt

In the above claim under the war minerals relief act, section 5, act of March 2, 1919 (40 Stat. 1274), an award of $219,607.90 was made August 8, 1919. Nothing was there allowed for railroad.

Additional testimony as to the railroad has now been submitted. The claimants have also urged that the amount of expenditure to which the percentage of stimulation was applied should be increased. I have reviewed the record, the report of the War Minerals Relief Commission, and the exceptions thereto filed. No reason is found for disturbing the prior ruling as to the railroad. To the amount of expenditure upon which the percentage of stimulation (56.6%) was applied the sum of $3,228.01 is added.

The award is accordingly increased to $223,629.17.

(Signed) FRANKLIN K. LANE.

Ex. D to response to rule

(Copy)

JB–WCS. SEPTEMBER 22, 1922.

Claim No. 1. The Ches'atee Pyrites and Chemical Corporation, Atlanta, Georgia

Memorandum in review of

This claimant had a partially developed plant at the time of Government interference, and the claim represents the loss due to the expanded operations under Government stimulation. It was the first claim considered under the original war minerals relief act.

The commissioners had had no experience in dealing with big, complex claims, and therefore no rules or policies had been tested by actual application. They attempted to fix the loss through percentages, that is, by basing it upon the proportion the amount claimant meant to expend and produce under his own nonstimulated plans bore to the estimated expenditure and production of the bigger mill, under Government stimulation. The result was that the percentage fixed by the commission was increased by the Secretary and later, by the latter still further increased, with the claimant insisting that all were too low, and that the per cent should apply to all the expenditures instead of to only a part of them.

It may be said now, without criticism of the former commission, that the plan was unsatisfactory in some respects. Percentages and ratios were confusing, and the element of doubt was too great. A more easily understood and more workable plan was adopted in the consideration of claims which came later.

In the present review the former plan is not ignored entirely, as will be seen by the auditor's report, but the claim is considered practically de novo, in the belief that it is better to apply rules which have grown out of experience, and with which examiners are familiar, than to merely consider the alleged errors of a plan which is unfamiliar, because abandoned long before the amended act, under which we are now considering these claims, was passed. The auditor was directed to audit this claim in the same manner that all claims are now being audited. This meant that he was to treat the company as a going concern on the date of stimulation; that any loss or profit prior to that date, concerning which even claimant and counsel are not in perfect agreement, was claimant's own, with which the Government is not concerned; that all expenditures during the stimulation period, or which properly should be charged to the period, were to be listed; that deductions for items not allowable and salvage were to appear, and that the net loss was thus to be shown.

There may be controversy, later, over the items disallowed, or the salvage; but the plan itself can at least be understood and the

points in controversy, if controversy should follow, will not only be reduced in number, but they will be set out plainly. By this method the Government takes no account of the operations before stimulation, when it was not responsible for either losses or profits, but ascertains the loss during the stimulated period, for which it is responsible, by simply deducting from the expenditures for that period the items which must be disallowed, the receipts and the salvage. Pursuant to these instructions the claim was audited, and the auditor's report, which is submitted herewith, shows that the task was performed with painstaking care and intelligence.

Based upon that report, but not agreeing with the conclusions in every particular, the expenditures, deductions, and net loss are hereinafter set out.

It will be observed that the expenditures for the building of the railroad, which heretofore have been denied, are allowed. Considered under the amended act, and in the light of the accepted practice, there is no reason whatsoever why the expenditures for this railroad should not be compensated. Claimant, before stimulation, may have had it in mind some day to build the road, and he may have taken advantage of the opportunity to purchase some rails at a low price, but there is not the certainty that he would ever have built it. A fair deduction would be that the plan to build the road had been abandoned. There is the certainty that the road was built after Government stimulation; that Secretary Lane approved if he did not direct the building; that it was necessary in connection with the mining project, and claimant testifies that but for such stimulation and such urgency the expenditure would not have been made. The record is so clear, and so complete as to details, that there can be no reasonable doubt as to Government responsibility.

Deductions

All interest charges have been deducted. It is not believed that the act contemplates the payment of interest on borrowed capital. Counsel for claimant has filed a brief on this point in which, after acknowledging that in claims against the Government, interest is not allowed before judgment, he cites exceptions to the rule and attempts to place the beneficiaries of this act in the excepted class. He points to the contributions made by citizens in aid of the Revolutionary War, and the War of 1812, wherein interest was allowed when, finally, these advances were repaid by the Government. But the claimants under the war minerals relief act do not stand in the same moral relation as did the persons who advanced money to the Government during the Revolutionary War or the War of 1812. The difference is that the early patriots placed their money at the disposition of their Government without expectation or chance of profit, but with the probability that all would be lost, while claimants under the war minerals relief act engaged in a

business enterprise with hope and the expectation of profit. The Government now, because it publicly urged increased production of ores, voluntarily repays net losses in cases where the hope of profit was not realized. The difference is plain.

Counsel further, cites the case wherein the State of New York, by a decision of the Supreme Court, was refunded interest on bonds which were issued to equip troops for the Civil War. Here, however, there was between the State of New York and the Government what amounted to a definite contract. Secretary Seward having wired the New York State officers to raise and equip the troops and stating that the Government would refund to the State the expenses incurred. Also Congress had passed an act authorizing the refund. That is why the New York case was made an exception to the rule laid down by the Supreme Court, the language of which rule is as follows:

"Interest is not to be awarded against a sovereign government unless its consent to pay interest has been manifested by an act of its legislature or by a lawful contract of its executive officers."

There were present in the New York case what the Supreme Court held to be a "lawful contract," which contemplated the repayment of interest and the necessary legislative action.

Counsel also bases the claim for interest upon the equity provision of the war minerals act. The equity provision is a broad provision. The act, it is supposed, would be administered in equity even though the provision were absent. But the provision which says that no profits shall be allowed is a specific provision not to be ignored on the ground that "equity" would prevent its observance. It is because of this specific provision that interest on an operator's own money can not be allowed, for such compensation would be in the nature of a profit to him. If, therefore, interest is to be allowed to the man who operated on borrowed capital, it must be upon the theory that he is to be treated differently from the man who risked his own money in the enterprise; that claimants who had no capital of their own, but had to borrow, are to be made a favored class.

If the provision of the act relating to profits prevents an allowance for interest to the man who used his own money, it applies to all other claimants as well. If Congress had intended to allow interest on borrowed capital, undoubtedly it would have provided for interest on invested capital, whether borrowed or not. In prohibiting the payment of interest on invested capital, by including the no-profits provision, the payment of interest on borrowed capital was likewise prohibited. It is difficult in law or practice to place the man who has no capital on exact footing with the man who has. The disadvantage of having no capital is recognized in the business world, and the borrowing operator always is compelled to stand the charges which lack of capital entails. Unless it is to be held that interest on capital is not profit, the conclusion is inevitable that the interest loss sustained through the borrowing of capital is the operator's own loss and can not here be compensated.

Would apply to purchase of property

The arguments which ordinarily are used to support the repayment of interest apply with equal force to reimbursement for purchase of property. How, it is asked, could a miner without capital be expected to respond to the appeals of the Government for ore if he did not borrow the money, and, having borrowed it and produced the ore, why is the interest he paid not a legitimate item of expenditure under the act? Might it not as well be asked how a man having no mining property could answer the appeal unless he purchased or leased mining lands, and if he did so purchase or lease lands and thereby produce ore, would the purchase price not be a legitimate expenditure?

But if the Congress had contemplated reimbursement for purchase of property, many more millions than are represented in the war minerals fund would have been appropriated, and provision would have been made for taking over of title to the property. It is a wrong inference to say that, in issuing appeals for increased production, the Government assumed a moral obligation to supply men with capital, to pay the cost of securing capital, or to take over mining lands at cost to the owners thereof. It is equally erroneous to read into the act a legal direction that expenditures of this
17 character be compensated. When Congress permits the payment of interest by special act it is subject to conditions, such as rate of interest, period of time, etc., none of which conditions appear either in the original or the amended act. At the time the act was amended, last November, Congress and claimants well know that the act was interpreted by those who were administering it to prohibit repayment for interest. Then was the time the question should have been raised and congressional expression secured. It has been contended before this writer that the Government, in publicly urging increased production of these ores and not at the same time furnishing or offering to furnish the capital required, thereby assumed the obligation to repay interest charges where borrowing was necessary. Conversely may it not be said that by not offering to furnish capital the Government gave notice that the matter of capital was the miner's own affair. The argument is further met by the fact that the Government permits the payment of interest through specific legislative action and not through obligations created as described.

Financing charges

If, then, the general published appeals for increased production do not relate to the furnishing of capital to those who did not have it or the payment of interest to these who did, and if the act which followed contains no specific provision for financing charges, the payment of the latter must find its authority in the wide discretion given the Secretary of the Interior in the administration of the act.

There is no legal prohibition of the allowance of a financing charge, and if it were shown that the Government has specifically directed claimant to finance his operations substantially in the manner in which they were financed, the Secretary might, in his discretion, allow any part or all of such expenditure. And in the event of such allowance it would not mean that a hard and fast rule had been adopted which would make repayable financing charges due alone to general published appeals for increased production, nor would it mean that bonuses or promotion charges which, in fact, were only excessive, usurious interest charges, are to be compensated. It would only mean that in claims where the Government, through
18 its agents, was a party to the financing the fact might be taken into consideration by the Secretary in fixing the award.

In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the Government should underwrite the venture. This of course was impossible, and after some delay the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further, he asked them to assist in financing him. Ashcraft and Wilkindson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount. Claimant contends that the plan adopted was not more expensive than would have been the raising of the money by the sale of bonds, or through any of the other promotion plans which were in use during the war period. This, in substance, is claimant's side of the matter, and he asks that the cost of financing be compensated.

Ashcraft and Wilkinson were prominent in financial affairs. They had made a great deal of money in pyrites dealings because of the war. It is established that they urged claimant to enlarge his enterprise, and that they volunteered to secure the money therefor. They may have acted partly in response to the request of the Secretary, partly through patriotic motives, and partly because of the contract which they hoped to make and did make with claimant. Claimant was to pay 6 per cent on the loan to the bank, and in addition was to pay Ashcraft and Wilkinson from fifty cents to one dollar a ton upon the entire production of the new mill up to 335,000 tons. As it was confidently expected that the new mill would run to its full capacity, they stood to make hundreds of thousands of dollars in the deal. What they really did in consideration of the contract was to assume a risk of loss. If they had merely pointed the way by which the money was secured, without incurring any risk themselves, the contract would be outrageous. But the record shows that while they assumed a risk they took pains to make the risk as small as possible. They made the contract with the Chestatee Company, but in addition to the company's notes required the personal endorse-

ment of the notes by claimants. They took what amounted to a lien upon the property of the claimant company and the ore in the ground. And in order to make the chance for profit as large as possible claimant was required to make Ashcraft and Wilkinson the exclusive sales agent for the ore, for which they were to be paid a brokerage fee of 25 cents per ton. There were four successive contracts by which the $695,000 was furnished the claimant company, the last being more favorable to Ashcraft and Wilkinson than those which preceded it. It provided for the payment of $250,000 to Ashcraft and Wilkinson for their services in securing a loan of $695,000, and in addition for a brokerage fee of 25 cents per ton on the ore. This tells the story. It shows that the amount to be paid, not considering the brokerage fee, was more than thirty-five per cent of the loan—a per cent for financing far above that allowed in the wildcat schemes with which the country is familiar. To consider the financing charge in comparison with the estimated receipts for ore, as the auditor has done, obviously is not the proper view. The correct way to determine whether or not a financing charge is too high is to compare it with the amount of the loan. If, for instance, the receipts from the sales of ore should amount to $5,000,000, the per cent of the financing charge contained in this contract as compared with the $5,000,000 would be very small, but the fact would still remain that this claimant was to pay Ashcraft and Wilkinson $250,000 for a loan of $695,000.00. When a man in the ordinary course of business secures a loan, the commission is based upon the amount of the loan and not upon the value of the product which the borrower, as a result of the loan, might place upon the market. Of course, Ashcraft and Wilkinson are not the claimants here, although they will benefit more than will the claimants if an award be made, and whether or not they drove a hard bargain with claimants is not essential except as it bears upon the recognition of this financing contract as an obligation incurred and to be compensated. The real question is:

Was the financing contract such an obligation as should be repaid by the Government in whole or in part?

As to the allowance of the entire amount there can be no question that it would not be warranted. It would mean payment to Ashcraft and Wilkinson for ore still in the ground and which probably never will be mined. The unfulfilled part of the contract, if ever it was to be recognized under the act, was invalidated when Ashcraft and Wilkinson, having a lien upon the ore in the ground, consented to its disposal. When they took part in disposing of all the property of the Chestatee Company and winding up its affairs they were estopped from holding that company or the Pratts liable for the fulfillment of the contract. It is an error to hold that the provision in the act relating to obligations incurred means that any obligation whatsoever must be compensated. The language

should be interpreted in connection with the language of the entire act. The obligation must relate to producing or preparing to produce ore, and it must be a reasonable obligation, such as would be incurred by a reasonably prudent man. Moreover, the amount that would be repayable would be the amount for which the creditor could secure judgment in a court. The act contains a few mandatory provisions the meaning of which can hardly be misconstrued, and the general administration is left to the wise discretion of the Secretary of the Interior for the purpose, undoubtedly, of preventing the payment of ridiculous, unfounded, or unreasonable charges and to give to claimants the amounts to which they are in justice and equity entitled.

In the first award Secretary Lane allowed $18,112.00 for financing. He reached this amount by the following process: He first found that the per cent of stimulation which should be granted claimant was 56.6. On that basis $320,000 of the loan was considered admissible. He held that 10 per cent would be a reasonable allowance for financing, and, applying the 56.6 per cent of stimulation to 10 per cent of $320,000, the financing allowance was found to be $18,112.00.

I am of the opinion that 10 per cent is a reasonable allowance for financing in this particular claim. The amount of money required to meet the Government demands was so great as to make the securing of it by ordinary means almost impossible. The activities of the Government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in large measure, were personal, direct, and effective. The fact that Secretary Lane, who himself had a part not only in the stimulation of claimant but, through suggestion, in the financing, recognized that Ashcraft and Wilkinson had performed a service to the Government, is evidence of that service; and while the contract which they had with claimant furnishes no basis for fixing the amount to be allowed, a fair adjustment can be reached by a study of all the event connected with the transaction. Secretary Lane was warranted in making an allowance of 10 per cent, but the application of the 56.6 per cent both as to the amount of the loan and the 10 per cent itself operates to bring the allowance less than it should be. The total amount of this loan was $895,000. Of this amount $50,000 was used in the period before stimulation. The 10 per cent for financing should apply only to the amount of the loan which went into stimulated operations, namely, $845,000, so that the allowance which is here recommended is $84,500.00.

21

Salvage

The question of salvage is perplexing in nearly all claims, but here it is unusually complex and difficult. The claimant when submitting the claim estimated the usable value of all the property at $300,000; but that was not intended to be an estimate of the salvage

value, for it was stated at the time that there was no salvage value because by the terms of the lease the machinery and equipment, or practically all of it, could not be removed from the property. Claimant, it appears, in offering to accept a deduction of $200,000 did so in the belief that the equipment which they would have used in their own nonstimulated operations would have cost that amount, and in consenting to such deduction it was on the supposition that there would be no deductions for interest, salaries, etc. It was, in fact, a settlement proposition. Passing from the conjectural, let us see what was actually realized when this property was disposed of to the Piedmont Corporation. The claimant company had a floating indebtedness of $50,000, which it could not pay and which threatened to force it into bankruptcy. The Piedmont Corporation assumed this debt. The Piedmont Corporation, as a further consideration, transferred to claimant company $150,000 of its 22 preferred stock. The question is, Is this stock worth its face value? Claimant asserts that it is worth nothing at the present time, and in view of the demoralized condition of the business which the Piedmont Corporation was or is to carry on there are good grounds for the contention. But it is the policy to ascertain the value at the time of the armistice, and therefore the claimants' own statement on that point is taken for a basis. The total face issue of the stock was $1,000,000. If this stock represented an actual property value of $200,000, it was worth, as may readily be computed, 20 cents on the dollar, and the value of the $150,000 in stock transferred to the claimant company would be $30,000. I am of the opinion that this plan of ascertaining the deductible value of the stock is as equitable as any that might be adopted. The items of sales of equipment previously must be added to the foregoing salvage, but they are not in dispute and are set out in the schedule of deductions.

Then comes the equipment which was purchased before stimulation, but used during stimulation, which the auditor presents for consideration in connection with salvage. As a matter of history the auditor states that in the Denison claim, No. 30, the former commission allowed the cost of equipment purchased before stimulation and took no account of salvage, and he thinks that the Chestatee claim is on all fours with the Denison claim. If the auditor is right, the action of the former commission will not be accepted as a precedent to be followed, and the Denison claim, which is still before the commissioner for review, will be adjusted in harmony with the principles that are here being applied to the Chestatee claim. It should be stated in this connection, however, that [illegible] the present commissioner regard the two claims as materially dissimilar. The soundness of these diverging views will have judgment when a recommendation as to the Denison claim is made.

The plan of the present commissioner in adjustment of claims where the plant was a going concern at the time of stimulation, and the reasons therefor, may be stated in a few words:

Equipment and machinery purchased before stimulation but used during stimulation will be given a liberal rental or depreciation credit only. The reason why its purchase price will not be allowed is because the Government was in no wise responsible for its purchase, and the claimant at the moment he purchased the property had incurred any loss that might come, and that loss was therefore his own. To allow for its purchase would be in fact to allow for the purchase of property.

Supplies which were purchased prior to stimulation and used during stimulation and thereby made completely valueless, such, for instance, as coal, will be compensated in full.

To hold that when the Government interferred it destroyed claimant's estate and deprived him of probable profits, which should be compensated, as has been suggested, is not sound. First, that would mean an allowance of profits, which is specifically prohibited by the act, and the profits would be merely estimated profits which might never have been realized. Second, the Government only says to claimants that it will reimburse the actual net loss that was sustained for the stimulation period.

In this review it is held that the claimant is fairly entitled to a rental or depreciation allowance of 20 per cent of the machinery and equipment purchased before stimulation but used during stimulation, and the entire purchase price of the supplies which were so used or consumed and deprived of all salvage value. It is understood, of course, that ordinarily there must not be a deduction for salvage on equipment and machinery where rental only is allowed. In this claim the equipment and machinery so rented was a part of the plant as finally sold, and salvaged, but that fact was considered when the amount of salvage of the entire property was fixed, and therefore the 20 per cent now mentioned for rental is not subject to increase on account of salvage. The amount of the prestimulation expenditures to which the 20 per cent rental should apply is $132,139.31, which makes an allowance of $26,427.86 for that item. The cost of mixed [illegible] in the same period, which should be compensated is [illegible]

[illegible] allowance of $4,092 for G. D. and N. P. Pratt was [illegible] which appears in the [illegible] from partner or part owner of a [illegible] profit to him. [illegible]

Expenditure June 18, 1917, to Nov. 11, 1918, agreed upon by the auditor for the Government and the auditor for claimant			$784,791.14
Deductions:			
Ore sales	$582,077.87		
Executive salaries	25,936.67		
Interest	40,795.13		
Taxes	884.78		
Real estate	750.00		
Legal services	565.75		
	151,010.18		
Salvage:			
Salvage for stimulation period on basis of $80,000 from Piedmont Corporation	47,546.73		
Cash received for sundry equipment	7,695.00		
	55,241.73	206,251.91	
		578,539.23	
And allowances:			
Rents from property included in deductions in operations a/c	2,881.63		
Per diem G. L. and N. P. Pratt, in lieu of salary, 508 days each, @ $4.00	4,064.00		
Rental or depreciation on prestimulation plant, etc., 20 per cent of $132,139.31	26,427.86		
Misc. items, tools, material, for water supply, etc., purchased before stimulation but used in the stimulated operations and their value thereby totally destroyed	16,901.07		
Financing contract, 10% of $640,000	64,500.00		
		114,774.56	
		693,313.79	
Less award heretofore made and paid		223,529.17	
Net loss			469,784.62

I am of the opinion that the net loss for which claimant should now be compensated is $469,784.62, and I recommend an additional award of that amount. In reviewing this claim I have been struck by the magnitude of the expenditures and the possibilities of output. The very bigness of it tended to lead an examiner unconsciously to fail to give claimant full justice, but that I have tried to overcome. If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the entire country, used every means in his power to persuade the claimant to develop it. It is true that he could and did not guarantee claimants against loss, but his full influence short of underwriting the project was exerted. Always, too, there was a realization that claimant, in responding to the Government's [illegible] will suffer great financial loss, notwithstanding the [illegible] provisions of the war minerals relief act. It would be [illegible] that the recommendations contained herein offer a [illegible] adjustment, but it is believed that they approximate [illegible] as can be expected in view of the [illegible] and not terminal amendable [illegible] statute.

[illegible] award of $469,784.62.

(Signed) [illegible]

Assistant Comptroller.

26 No. 2 in response to rule

(Copy)

The Secretary of the Interior,
Washington, September 23, 1922.

Claim [redacted] 1. The Chestatee Pyrites and Chemical Corporation,
Atlanta, Georgia

Additional memorandum by the Secretary, to be attached to the records of the assistant commissioner as part of the record herein

I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim, additional allowance for services, and an allowance of an increased amount for compensation for the free-stimulation plant.

After full consideration I am confident that the conclusions reached by the commissioner are as nearly correct as it is humanely possible to arrive at a just and equitable sum to be awarded in relief; I therefore find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand, seven hundred eighty-four dollars and sixty-two cents ($469,784.62).

If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award of course does not preclude remedial action by the Congress of the United States acting directly.

(Signed) Albert B. Fall,
Secretary of the Interior.

In Supreme Court of the District of Columbia

[Title omitted.]

Demurrer

Filed Mar. 15, 1923

Comes now the relator, by its attorney, and says that the answer and response to the rule to show cause and to the petition herein is [illegible]

Note—Points to be argued

[illegible] shown by the answer and response and the undisputed [illegible] verified petition herein relator suffered [illegible] payments made and obligations incurred for the use of [illegible] and used in producing pyrites; that relator in making [illegible] and in incurring such obligations and [illegible]

the obligations complied with all the conditions of the law authorizing it to receive payment of its net losses; that respondent's predecessors in office refused to consider such net losses in the final decision making relator an award of other parts of its net losses; that from such facts such net losses for which an award was denied and payment refused are in law proper items to be included under awards required to be made by the Secretary of the Interior by the provisions of section 5 of the act of March 2nd, 1919, and acts amendatory thereof, which statutes are referred to in the pleadings herein.

2. This court has jurisdiction and authority under the act of February 13, 1929, to determine the question of law here involved and to enter such order herein as may be necessary to enforce its conclusion on such question of law.

EDGAR WATKINS,
Attorney for Relator.

Service accepted and receipt of copy acknowledged this 16th day of March, 1929.

O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of the District of Columbia

[Title omitted.]

Stipulation

Filed Sep. 24, 1929

It is hereby stipulated and agreed by and between counsel for the above-named parties:

1. That the submission of this cause heretofore made upon the petition and response be withdrawn.

2. That the response be withdrawn and stricken from the record.

3. That the uncertified copies of the findings of the Secretary of the Interior, the War Minerals Relief Commission, and the assistant commissioner of war minerals attached to the answer filed herewith be considered by the court in connection with this case with the same effect as though they were the originals.

4. That the respondent be permitted to file and serve answer in lieu of said response, and the demurrer to the response now on file be considered a demurrer to such answer.

5. That petitioner relies upon the briefs heretofore filed in this cause and files herewith a short statement, to which respondent has the right to reply at any time within ten days.

6. That thereupon this cause be, and the same hereby is, resubmitted to the court for final consideration upon the petition, answer, and demurrer.

Dated September 2, 1929.

EDGAR WATKINS,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of the District of Columbia

[Title omitted.]

Order on stipulation

Filed Sep. 24, 1929

In accordance with the stipulation of counsel for the respective parties to this case, dated September 2, 1929, and duly filed herein, it is this 24th day of September, 1929, adjudged and ordered:

1. That the submission of this case to the court upon petition and response heretofore made be, and the same hereby is, withdrawn.

2. That the respondent's response to the relator's petition heretofore filed in this case be, and the same hereby is, deemed to have been withdrawn by the respondent, and the same hereby is stricken from the record.

3. That the respondent be, and he hereby is, permitted to file and serve an answer in lieu of said response, and that the relator's demurrer to said response, which is now on file, be permitted to stand and be considered as a demurrer to such answer.

4. That the uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the commissioner of war minerals, which are attached to the answer of the respondent which is to be filed as aforesaid, may be considered by the court in its consideration of this case with the same effect as though they were original papers.

5. That this case now to be considered as having been resubmitted to the court for final consideration upon the petition, answer, and demurrer, and upon the briefs heretofore filed by the parties thereto and upon the supplemental brief now filed by the relator.

WENDELL P. STAFFORD, *Justice.*

In Supreme Court of the District of Columbia

[Title omitted.]

Respondent's answer to the petition for mandamus

Filed Sep. 24, 1929.

For answer to the petition for mandamus in this case the respondent [illegible] says as follows:

1. [illegible] admits the allegations of the first paragraph [illegible] explanation given in the second [illegible]

[illegible] that since the filing of the petition [illegible] respondent named therein, has [illegible] and that this respondent [illegible]

Lyman Wilbur, now is the Secretary of the Interior, and that he has been substituted as the respondent in this case in the place and stead of the said Roy O. Wo[illegible].

2. The respondent admits that the duties imposed upon the Secretary in office by the act of March 2, 1919, and the acts amendatory thereof, have now devolved upon him.

3. The respondent refers to the act of March 2, 1919, for an exact statement of its terms. He admits, however, that the excerpts from the act given in the third paragraph of the petition are substantially correct.

4. The respondent admits the allegations of the fourth paragraph of the petition.

5. The respondent admits the allegations of the fifth paragraph of the petition.

6. The respondent admits that relator made claim for losses based on payment of interest and obligations incurred to pay future interest on borrowed money, used in complying with stimulation, but denies that the various awards made by the Secretary of the Interior to claimant included interest, but that such awards, as made, actually were paid to and received and accepted by the relator. Respondent further denies that interest constitutes a loss; if, however, it is such in law, it is a loss not subject to reimbursement under the provisions of the act of March 2, 1919.

7. The respondent says that the provisions of the act of November 23, 1921, will appear by reference to the act itself.

The respondent admits that the Hon. Albert B. Fall, a former Secretary of the Interior, did review the claim of the relator, giving full consideration (Secretary's opinion, September 28, 1922), and specially the memorandum in review thereof by assistant commissioner of war minerals, John Briar, dated September 23, 1922.

9. Respondent admits that the report of the chief accountant dated September 21, 1922, was duly filed and now appears in the files of relator's said claim; that the same was made for the use of the War Minerals Relief Commission and the Secretary of the Interior, and has no value in the consideration of this review; that it was advisory in its nature and of no binding effect upon the Secretary of the Interior in the consideration or disposition of relator's claim. In said report it was shown that relator had paid out money and obligated itself to pay out money in the future as interest on money borrowed to prosecute the production of pyrites; but that relator was compelled to borrow money or to pay interest, as alleged, is denied.

10. On information and belief the respondent denies the allegations of the ninth paragraph of the petition so far as they state that the relator borrowed money for the purposes therein specified at the request of a former Secretary of the Interior.

11. He admits that relator was stimulated by a former Secretary of the Interior to increase its production by enlarging its operations;

that relator, after some delay, did increase its operations, borrowing the capital to do so, but that the borrowing of the capital to comply with such stimulation was neither urged nor requested by Secretary Lane, his specific request and stimulation being as stated in detail in the report of the assistant commissioner, Briar, supra.

10. The respondent admits the substance of the allegations of the tenth paragraph of the petition, except that he specifically denies that the relator is now entitled to receive any further allowance under its war mineral claim, because he says that all that was justly and legally due to the relator under its said claim already has been paid to and received and accepted by it. The Secretary of the Interior, in his decision of September 28, 1922, said:

"If the claimant contemplated the payment of interest upon this claim, as has been suggested in argument, then this award, of course, does not preclude remedial action by the Congress of the United States acting directly."

11. The respondent admits that the relator's war mineral claim was brought before the Hon. Albert B. Fall, then Secretary of the Interior, and that Secretary Fall made an additional award to the relator in the sum of $469,784.62 in a decision dated September 28, 1922; the respondent says that the amount of this award actually was paid to and received and accepted by the relator, thus making a total of $693,313.79 paid to it on account of its said war minerals claim.

The respondent says that the basis for the Secretary's award, as stated in his decision, was as follows:

"I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim, additional allowance for services, and an allowance for an increased amount for compensation for the free-stimulation plant.

"After full consideration I am confident that the conclusions reached by the commission are as nearly correct as it is humanly possible to arrive at a just and equitable sum to be awarded in relief; I therefore find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousands, seven hundred eighty-four dollars and sixty-two cents ($469,784.62)."

The respondent says further that the exact language used by Assistant War Minerals Relief Commissioner John Briar in his recommendation to the Secretary of the Interior, which is referred to in paragraph 11 of the petition, was:

"If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the entire country, used every means in his power to persuade the claimant to develop it."

12. The respondent admits the allegations of the 12th paragraph of the petition.

13. Answering the allegations of the 13th paragraph of the petition, the respondent says that he is not advised what, if any, action was taken with respect to relator's claim for the payment of interest by other Secretaries of the Interior who held office subsequent to the Hon. Albert B. Fall. The respondent says, however, that he himself, acting through his subordinates, has declined to make any further award to the relator on account of interest alleged to have been paid by it.

14. The respondent says that the provisions of the act of February 13, 1929, will appear by reference to the act itself.

Answering the allegation of the 14th paragraph of the petition that "it is not disputed as a matter of fact that relator suffered net losses by reason of payment of interest on money borrowed and by reason of obligations to pay said interest," the respondent says that he most emphatically denies this allegation. The respondent says that it is disputed as a matter of fact that the relator suffered any such losses. The respondent says that the interest paid by the relator, and its obligation to pay interest as it accrued, represented the payment and the contract to pay a fair price for the use of money borrowed by the relator, and that the use of the money by the relator had a contract value exactly equivalent to the sum paid or agreed to be paid as interest for its use. The respondent says, therefore, that no loss in fact could result to the relator because of its interest payments, as such payments were made for an equivalent value received. The respondent says that the fact that the borrowed money after it came into the possession of the relator may have been lost by the relator in producing or preparing to produce pyrites is a matter entirely separate and distinct from the relator's contract obligation to pay value to his creditor for the use of his money.

The respondent says, therefore, that the ruling of the Hon. Albert B. Fall that interest paid or agreed to be paid by the relator for borrowed money did not constitute a loss within the meaning of the act of March 2, 1919, was right and proper, and it is ratified and adopted by this respondent.

The questions of law submitted for review therefore are: (1) Is interest paid and obligations to pay future interest for the use of money a loss? If this question be answered in the negative, the controversy is ended, but if in the affirmative, the further question arises: (2) Is it that character of loss which comes within the purview of the war minerals relief act for reimbursement?

15. Answering the allegations of the 15th paragraph of the petition, the respondent again explicitly denies that the relator in fact suffered any loss by paying interest for the use of money.

16. The respondent denies the allegations of the 16th paragraph of the petition.

17. Answering the entire petition, the respondent says that the act of March 2, 1919, pursuant to which the relator's war minerals claim No. 1 was filed, authorized the Secretary of the

Interior to adjust, liquidate, and pay such net losses as had been suffered by any person, firm, or corporation by reason of producing or preparing to produce pyrites, and other specified minerals, under the conditions set forth in the act. The act provided further that the Secretary should make such adjustment and payment in each case as he determined to be just and equitable, and that no claim should be allowed or paid by the Secretary unless it should appear to his satisfaction that the expenditures made or obligations incurred under the terms of the act were made or incurred by the claimant in good faith for or upon property which contained the minerals specified, and that no profit of any kind should be included in the allowance of any of said claims.

The respondent says that the authority and duty to construe and interpret the various provisions of the act in question were vested and imposed by Congress in and upon the Secretary of the Interior, and that in the exercise and discharge of their authority and duty as aforesaid the various Secretaries of the Interior have construed the act as intending that the same rules for the adjustment of claims filed under its provisions should be applied to all claimants alike, and that the act should be administered without discrimination in favor of any particular class of claimants.

The respondent says that more than a thousand claims were filed under the provisions of the act, and that they were presented by claimants who at the date of the passage of the act owned property, real and personal, upon or in connection with which losses thereafter were claimed; by claimants who owned money at the date of the passage of the act which they thereafter invested in such property and in the development and operation of the same; and by claimants who borrowed the money of other persons and then invested it in such property, and in the development and operation of the same.

The respondent says that the various Secretaries of the Interior, including himself, were unable to find any provision in the
36 act of March 2, 1919, which authorized them to make an allowance in favor of one who invested his own money in the purchase, development, and operation of such property on account of the use of the money so invested. Accordingly the respondent and his predecessors during the ten years which have elapsed since the passage of the act of March 2, 1919, have uniformly, and without exception so far as is known to this respondent, refused to make any allowance for the use of money in favor of war minerals claimants who invested their own money in producing or preparing to produce war minerals within the terms of that act.

The respondent says also that he and his predecessors were unable to find any distinction in law between the use in producing and preparing to produce war minerals of property already owned by a claimant, or the use of property which the claimant had acquired with his own money, and the use of property acquired by a claimant with borrowed money. They also were unable to find any distinction between development and operation of such property by a claimant

who employed his own money for that purpose, and the development and operation of such property by a claimant who employed borrowed money for that purpose. The respondent and his predecessors therefore have uniformly refused to make any allowance to a claimant on account of borrowed money by reimbursing it for the interest paid by it for the use of the borrowed money. The respondent says that any other interpretation of the act would have resulted in a discrimination in favor of claimants who were borrowers as against claimants who were owners or purchasers, and would have been against the plain intention of Congress as understood by himself and his predecessors.

17–a. The respondent says further that he and his predecessors have found, as a matter of fact, that interest paid by a borrower for the use of money does not represent a loss to the borrower, because the use of the money which the borrower enjoys has an agreed contract value which is exactly equivalent to the interest paid for the use of the money. The respondent says that the fact that borrowed money may have been employed by a war-minerals claimant in producing and preparing to produce war minerals, instead of
87 in some other way, and may have been lost in so doing, does not alter the case. The respondent and his predecessors therefore have interpreted the act of March 2, 1919, as prohibiting awards to claimants on account of interest paid for money lost in producing or preparing to produce war minerals, and have restricted their awards to the loss of the money itself.

17–b. The respondent says further that he and his predecessors have found as a matter of fact that to allow interest to a claimant upon money borrowed by it and thereafter employed in producing or preparing to produce war minerals would be to include a profit in the allowance of its claim, contrary to the provisions of the act of March 2, 1919. The respondent says that a war minerals claimant who borrowed money and employed it in producing or preparing to produce war minerals, profited to the extent of the value of the use of the money, and that the payment of interest by the claimant to the lender as compensation for the use of such money was not a loss, but simply was a surrender of the profit. The respondent says that for the United States to reimburse a claimant for interest paid upon money borrowed by it and thereafter employed in producing or preparing to produce war minerals, would be nothing less than an allowance of profit to the claimant in the adjustment of its claim. The respondent and his predecessors therefore have construed the act of March 2, 1919, as prohibiting the allowance of interest paid upon borrowed money, for that reason also.

17–c. The respondent says further that he and his predecessors in office have construed the provision of the act of March 2, 1919, "that no claim shall be allowed or paid by the Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained" certain specified minerals as meaning exactly what it says. The respondent says that

the payment of interest or an obligation to pay interest on borrowed money by a war minerals claimant was a matter entirely separate and distinct from the expenditure of the money itself for or upon mineral property, and from the obligations incurred for or upon such property, and that therefore he and his predecessors have construed the act of March 2, 1919, as prohibiting the allowance of a claim for the payment of interest for that reason also.

The respondent says that the foregoing constructions placed upon the act of March 2, 1919, by himself and his predecessors all are warranted by the express language of the act itself, and that none of them is capricious or arbitrary, and that as these constructions of the act all have been consistently adhered to in the Department of the Interior for ten years past, and since the passage of the act of March 2, 1919, such constructions and interpretations of the act should be respected by the courts, and accepted as stating the true intention of Congress with respect to claims for losses by war minerals claimants on account of interest paid on borrowed money.

18. The respondent says further that the relator's war minerals claim No. 1 was the first claim to be filed under the act of March 2, 1919, and that the decisions made with respect to it were among the earliest ruling of the Secretary of the Interior made in the administrations of that act. The respondent says that the language used by the Hon. Albert B. Fall, in his decision of September 28, 1922, which is cited by the relator in paragraph 12 of its petition, wherein he said, "If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award of course does not preclude remedial action by the Congress of the United States acting directly," was a direct suggestion to Congress to set the Secretary of the Interior right if he was wrong in deciding that interest paid for borrowed money was not within the purview of the act of March 2, 1919. The respondent says that although the question of interest has been litigated in the courts, and although Congress has passed further legislation with respect to war minerals claims, Congress has never declared or intimated that an award should be made on account of interest payments, but through eight years of silence has tacitly acknowledged the correctness of Secretary Fall's interpretation of its intention in that respect as expressed in the act of March 2, 1919.

19. The respondent, for the reasons hereinbefore stated, denies that he or his predecessors in office have committed any error in law by denying an award to the relator for losses alleged to have been sustained by it through the payment of interest upon borrowed money.

Having fully answered the petition, the respondent asks to be hence dismissed with costs.

RAY LYMAN WILBUR,
Secretary of the Interior.
By JOS. M. DIXON,
Acting Secretary of the Interior.

[Duly sworn to by Jos. M. Dixon; jurat omitted in printing.]

In Supreme Court of the District of Columbia

At law. No. 76361

CHESTATEE PYRITES & CHEMICAL CORPORATION

vs.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR

Final judgment

Filed Mar. 7, 1930

This cause came on to be heard on the petition of Chestatee Pyrites & Chemical Corporation for review and mandamus, and upon the answer of the respondent and the demurrer of petitioner, and upon the stipulation of the parties and the order of this court approving such stipulation, entered on the 24th of September, 1929, which order and stipulation submitted to the court for final consideration upon the petition, answer, and demurrer the issues made thereby.

Now, on this March 7, 1930, ordered, adjudged, and decreed that the petition of Chestatee Pyrites & Chemical Corporation for review and mandamus is denied, and it is ordered and decreed that the questions of law raised by the petitioner were properly adjudicated by the Secretary of the Interior, and the petition for review and mandamus are dismissed.

By the court:

WENDELL P. STAFFORD, *Justice.*

From the foregoing judgment Chestatee Pyrites & Chemical Corporation, petitioner, in open court, notes an appeal to the Court of Appeals of the District of Columbia, which is allowed, and the undertaking for costs on such appeal is fixed in the sum of one hundred dollars, with leave to deposit the sum of fifty dollars with the clerk in lieu thereof.

By the court:

WENDELL P. STAFFORD, *Justice.*

Consent as to form.

O. H. GRAVES, *Atty. for Deft.*

EDGAR WATKINS,
Attorney for Chestatee Pyrites & Chemical Corporation.

41 *Memorandum re bond*

March 7, 1930: $10 deposited in lieu of bond on appeal.

In Supreme Court of the District of Columbia

[Title omitted.]

Assignment of errors

Filed Mar. 7, 1930

The appellant, Chestatee Pyrites & Chemical Corporation, assigns the following errors in the ruling of the court.

The court erred:

1. In refusing on the admitted facts to adjudge and decree that interest paid on borrowed money by appellant and subsequently lost, constituted an item of net losses under section 5 of the act of March 2, 1919, and the amendments thereto, upon which act and amendments appellant relied in its petition herein.

2. In refusing on the admitted facts to adjudge and decree that obligations to pay interest on money borrowed by appellant, and subsequently lost, constituted an item of net losses under section 5 of the act of March 2, 1919, and the amendments thereto, upon which act and amendments appellant relied in its petition herein.

3. In refusing to review the acts of the respective Secretaries of the Interior referred to in the petition, and in refusing to enter an order directing the respondent Secretary to make an appellant an award of such amounts as the facts show appellant paid for the use of borrowed money and which payment admittedly was lost by appellant.

4. In refusing to review the acts of the respective Secretaries
42 of the Interior referred to in the petition, and in refusing to enter an order directing the respondent Secretary to make to appellant an award of such amounts as the facts show appellant obligated itself to pay for the use of borrowed money, and which obligation admittedly was an item of loss to appellant.

5. In refusing to issue a writ directing the respondent-appellee to take jurisdiction of the claim of appellant and determine the amount of net losses for expenditures made and obligations incurred for interest on borrowed money, and further directing respondent-appellee to make an award to appellant for the net losses incurred by such expenditures and from such obligations.

6. In denying appellant relief on its petition herein.

EDGAR WATKINS,
Counsel for Appellant.

In Supreme Court of the District of Columbia

[Title omitted.]

Designation of the record

Filed Mar. 7, 1930

The clerk will please prepare the transcript of record on the appeal of Chestatee Pyrites & Chemical Corporation, including therein the following parts of the record:

1. Petition for review and mandamus.
2. The petition for an order substituting Ray Lyman Wilbur as respondent.
3. The original response to the rule to show cause, with the exhibits thereto attached.
4. Demurrer filed by Chestatee Pyrites & Chemical Corporation.
5. Stipulation of the parties hereto, dated September 2, 1929.
6. Order of the court on said stipulation, dated September 24, 1929.
7. Respondent's answer to the petition for mandamus, omitting the exhibits copied with paragraph 3, above.
8. Final decree denying relief and dismissing the petition for review and mandamus.
9. Memorandum as to approval and filing of bond on appeal of Chestatee Pyrites & Chemical Corporation.
10. Assignment of errors on appeal of Chestatee Pyrites & Chemical Corporation.
11. This designation of transcript of record and the acceptance of service thereon.

EDGAR WATKINS,
Counsel for Appellant, Chestatee Pyrites & Chemical Corporation.

In Supreme Court of District of Columbia

Acknowledgment of service

Notice is hereby accepted of the application for an allowance of the appeal in this cause; receipt is hereby acknowledged of a copy of appellant's assignment of errors and of its designation of record on appeal. All other and further notice and service is acknowledged.

O. H. GRAVES,
Solicitor for Ray Lyman Wilbur, Secretary of the Interior.

[Clerk's certificate to foregoing transcript omitted in printing.]

44 [Omitted.]

45 In Court of Appeals of the District of Columbia.

[Title omitted.]

Minute entry of argument and submission

Oct. 9, 1930

The argument in the above-entitled cause was commenced by Mr. Edgar Watkins, attorney for the appellant, and was continued by Messrs. O. H. Graves and Victor H. Wallace, attorneys for the appellee, and was concluded by Mr. Marion Smith, attorney for the appellant.

46 In Court of Appeals of the District of Columbia

No. 5194

THE UNITED STATES OF AMERICA EX REL. CHEMICAL PYRITES & Chemical Corporation, a Corporation, appellant

vs.

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, APPELLEE

Before MARTIN, Chief Justice, ROBB, Associate Justice, and WHEAT, Chief Justice of the Supreme Court of the District of Columbia.

Opinion

Filed Feb. 2, 1931

Mr. Justice WHEAT delivered the opinion of the court:

This is an appeal from a judgment of the Supreme Court of the District denying a petition of the relator for review, pursuant to the act of February 15, 1929 (c. 182, 45 Stat. 1166), of the action of the Secretary of the Interior in rejecting a claim filed under section 5 of the act of March 2, 1919 (c. 94, 40 Stat. 1272, 1274), commonly called the war minerals relief act.

The sole question presented is whether interest paid or agree to be paid by the relator on borrowed money expended in producing or preparing to produce pyrites constitutes a loss which, by the terms of that act, the Secretary should recognize and pay. The court below, affirming the decision of the Secretary, held that it did not, and that ruling is brought here for review by the relator's appeal.

This precise question was before this court in the case of Work v. United States (54 App. D. C. 380, 298 Fed. 839), which, on May 5, 1924, decided the question in favor of the relator.

On appeal to the Supreme Court that judgment was reversed upon the ground that the statute clothed the Secretary of the Interior with

complete discretion to determine the question, a discretion not reviewable by the courts. (Work v. United States, 267 U. S. 175.)

On February 13, 1929, the act of March 2, 1919, as amended, was further amended so as to provide:

"That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said acts, generally known as the war minerals acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court." (Act of Feb. 13, 1929, c. 182, 45 Stat. 1166.)

Section 3 of the same act conferred jurisdiction upon the Supreme Court of the District to hear and determine all such suits, subject to a right of appeal by either party to this court, with a further review by the Supreme Court of the United States, by certiorari, as provided by law and the rules of court.

Pursuant to this act the relator, on February 18, 1929, filed a petition in the Supreme Court of the District, setting forth facts necessary to bring itself within the statute, and asking the court to review the decision of the Secretary of the Interior, and issue a writ of mandamus directing him to take jurisdiction of the claim and to adjust and pay relator's net losses consisting of interest paid on borrowed money and obligations incurred to pay further interest thereon. The Secretary answered the petition, and to that answer the relator demurred. The pleadings were so drawn as to present squarely that single issue of law, a decision of which, we are led to believe, is desired and sought by both parties.

When the question was before us before, it was fully presented and carefully considered. The language of the statute was that those bringing themselves within the other provisions of the statute "shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said act."

Construing this language, we said:

48 "Being, therefore, an element of the expenses incurred, we think that in equity and justice the interest paid or obligated to be paid in this case should be allowed." (Work v. United States, 54 App. D. C. 380, 385; 298 Fed. 839, 842.)

We see no reason for now taking a different attitude toward the question. The reversal by the Supreme Court was not upon the ground that our decision had construed the statute erroneously, but upon the ground that we had no jurisdiction to review the construction placed upon it by the Secretary.

It is urged by respondent that the act of February 18, 1929, does not alter the provision of the preceding war minerals act; that at the time the 1929 act was under consideration Congress knew that the Secretary of the Interior had always construed section 5 of the act of March 2, 1919, as excluding from its benefits interest paid upon borrowed money, and that for approximately 10 years the Secretary of the Interior had acted upon that construction of the act; that as far back as 1922 Secretary Fall had invited the correction of Congress in case his conclusion with respect to interest was wrong; that during the four years since the decision of the Supreme Court of the United States Congress had remained silent; and that the act of February 18, 1929, is silent with respect to interest. Such being the sequence of events, it is argued that if Congress disagreed with the construction placed upon the act by the Secretary "nothing could have been easier than for it to have said so."

It is equally clear, however, that if Congress had agreed with the construction placed upon the act by the Secretary nothing could have been easier than for it to have said nothing whatsoever. Instead of doing so it conferred jurisdiction upon the same court which therefore, in the exercise of its supposed jurisdiction, had decided the question contrary to the decision of the Secretary. The inference that Congress approved of the decision of the court is at least as strong as the inference that it approved of the decisions of the Secretary. Whereas his decisions had theretofore been final and conclusive, they now became reviewable by the same court, which had theretofore pronounced them erroneous. We can see no purpose in the act other than to give the court power to decide the question. If that was not its purpose, then the statute is meaningless. Feeling as we do that our former decision was correct, it follows that the judgment appealed from must be reversed, and the cause is remanded for further proceedings not inconsistent herewith.

[File endorsement omitted.]

50 In Court of Appeals of the District of Columbia

No. 5194. January term, 1931.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, a Corporation, appellant

v.

RAY LYMAN WILBUR AS SECRETARY OF THE INTERIOR

Judgment

Feb. 2, 1931.

APPEAL from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued

by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said supreme court for further proceedings not inconsistent with the opinion of this court.

Per Mr. Justice WHEAT.

FEBRUARY 2, 1931.

Mr. Chief Justice Wheat of the Supreme Court, D. C., sat in this case in the place of Mr. Justice Van Orsdel.

81 In Court of Appeals of the District of Columbia

[Title omitted.]

Designation of record

Filed April 29, 1931

The clerk will prepare a transcript of record in the above-entitled case, including the following:

1. Printed record.
2. Note of the argument.
3. Opinion of the court.
4. Judgment of the court.
5. This designation and clerk's certificate.

THOMAS D. THACHER,
Solicitor General,
Counsel for Appellee.

APRIL 29, 1931.

82 [File endorsement omitted.]

83 [Clerk's certificate to foregoing transcript omitted in printing.]

84 Supreme Court of the United States

Order allowing certiorari

Filed May 25, 1931

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 35858. District of Columbia, Court of Appeals. Term No. 67. Ray Lyman Wilbur, as Secretary of the Interior, petitioner, vs. United States of America ex rel Chestatee Pyrites & Chemical Corporation. Petition for a writ of certiorari and exhibit thereto. Filed May 2, 1931. File No. 35858.

U. S. GOVERNMENT PRINTING OFFICE: 1931